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DDS 60-3285

COMPTROLLER GENERAL OF THE UNITED STATES
Washington 25

B-143722

August 31, 1960

Mr. Allen W. Dulles, Director
Central Intelligence Agency

Dear Mr. Dulles:

On August 4, 1960, you requested our decision concerning the propriety of a proposed regulation under which certain employees, upon their separation from the Central Intelligence Agency, would be granted separation compensation.

The monetary benefits provided under the proposed regulation would be payable only to those employees of the Central Intelligence Agency who are separated as surplus and whose previous experience in the Agency consisted of such highly specialized and unique activities as to hamper seriously their opportunity for employment elsewhere. You say that the regulation will not benefit any employee who is separated for cause or whose employment is terminated under the Agency's Selection Out Program or who voluntarily retires. You consider that the program contemplated under the proposed regulation not only would be equitable to employees who may be separated as surplus but is necessary in connection with the recruitment of new career employees. Your concluding paragraph is to the effect that the program contemplated under the proposed regulation is urgently needed to enable your Agency to carry out its function under an efficient and effective personnel management program.

In general, under the proposed regulation the amount of separation compensation would vary in individual cases depending upon the salary rate of the employee and the length of continuous service (up to 12 years) with the Agency. In no event could the total amount payable exceed twelve months' basic salary at the rate the individual was receiving immediately prior to separation or at the highest scheduled rate of grade GS-14, whichever is less. The statutory authority under which the regulation would be issued is that appearing in section 8 (formerly section 10) of the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 403j, on the ground that the Agency is imposing new conditions of employment on its personnel which warrant additional compensation. The regulation would apply prospectively to separations within their scope. Cf. 31 Comp. Gen. 191. The cited section is in pertinent part as follows:

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"(a) Notwithstanding any other provisions of law, sums made available to the Agency by appropriation or otherwise may be expended for purposes necessary to carry out its functions, including--

- (1) personal services, including personal services without regard to limitations on types of persons to be employed * * *

"(b) The sums made available to the Agency may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds * * *."

We note that many of the purposes for which Agency funds may be expended "notwithstanding any other provisions of law" are specifically enumerated in subsection (a) which enumeration includes "personal services." The question arises, therefore, whether expenditures for "personal services" properly may include separation compensation which under the proposed regulation would continue to be made after the personal service relationship between the Agency and the employee is terminated. While the matter is not entirely free from doubt, we think that separation compensation reasonably may be viewed as a type of deferred compensation which, under your regulation, would be earned as an employee but would be payable at and after his separation. Such compensation would be based upon continued performance, over a period of years, of an unusual type of service and the amount to which any individual would be entitled would be in direct proportion--subject to the maximum limitation--to the length of Agency service rendered. There is no doubt concerning your authority to fix compensation and viewing the payments provided for under the proposed regulation as compensation, we think that it is reasonable to conclude that they constitute expenditures for "personal services" as that term is used in section 8(a).

It is noteworthy, however, that the enumeration of purposes in section 9(a) for which sums may be expended "notwithstanding any other provisions of law" is not exclusive. The section contemplates that your Agency may make additional expenditures (other than for the enumerated purposes) "for purposes necessary to carry out its functions" and under subsection (b) expenditures may be made "without regard to provisions of law and regulations relating to the expenditure of Government funds." Hence, even if separation compensation were regarded as an expenditure for other than "personal services", such expenditure reasonably might be regarded as permitted by the statute, provided it was "necessary to carry out" the functions of your Agency.

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Having regard for the necessity of separating "as surplus" certain career personnel in your Agency after comparatively short periods of service, the probable difficulty these employees may encounter in effecting transfers to other positions or finding other suitable employment after their separation from your Agency, and the difficulty your Agency expects to experience in the recruitment of required numbers of career personnel for certain types of positions, the expenditures for separation compensation reasonably may be viewed as expenditures "for purposes necessary to carry out" the functions of your Agency whether such separation compensation be regarded as an expenditure for "personal services" or otherwise.

Therefore, we would have no objection to your promulgating a regulation along the lines proposed. We note, however, that the proposed regulation does not expressly cover a situation in which death of an individual entitled to separation compensation occurs prior to his receipt of the full amount of separation compensation otherwise payable. While we presume it is intended that death would extinguish all rights to separation compensation that was not payable prior to the date thereof, it would be preferable if your regulation would clarify the matter.

It is noted from your letter of August 4, 1960, that appropriate committees of the Congress have been informed of the proposed regulation. While, as stated above, we are of the opinion that legal authority exists for the granting of separation compensation to certain employees of the Central Intelligence Agency, we suggest that the regulation not be issued until such time as any questions raised by the congressional committees to whom the plan has been submitted are resolved.

Sincerely,

/s/ R. F. Keller
Acting Comptroller General
of the United States

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